

## Development Services

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Ms. Hilary Papendick  
California Coastal Commission  
c/o Sea-level Rise Work Group  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105  
Also via E-mail: [SLRGuidanceDocument@coastal.ca.gov](mailto:SLRGuidanceDocument@coastal.ca.gov)

**Re: California Coastal Commission Draft Sea-Level Rise Policy Guidance  
City of Oxnard Comments on Administrative Draft**

Dear Ms. Papendick:

The City of Oxnard (City), Planning Division, is in receipt of the California Coastal Commission (CCC) Draft Sea-Level Rise (SLR) Policy Guidance (SLR Guidance) dated October 14, 2013. We appreciate the opportunity to comment on the SLR Guidance. We are beginning the process of comprehensively updating our LCP to address sea-level rise, and we recognize the importance of the SLR Guidance to the processing of Coastal Development Permits (CDPs) in the interim. During our review of the SLR Guidance, we have identified several concerns listed below:

**1) *Guidance versus Regulation:***

Greater clarity is needed within the SLR Guidance to define its regulatory intent. In our view, it is premature to require jurisdictions to implement SLR Guidance when we are just starting to prepare a costly and time-consuming LCP update to comprehensively address SLR with extensive local public input to develop local adaptations. We suggest an interim period of three to five years during which routine CDPs, such as residential and commercial development within already developed areas that are subject to FEMA and other wave run-up and storm surge analyses, will not be appealed by the CCC only for lack of SLR Guidance-directed analysis. In this interim period, the CCC could define what major public works and large-scale new development should include SLR analysis and adaptations as consistent as possible with the Draft or Final SLR Guidance.

**2) *Funding and Uncertain Process:***

While it is important that the SLR Guidance be implemented through the LCP update process, limited funding and the need to develop local SLR expertise and an uncertain Coastal Commission review process could create significant implementation delays. Jurisdictions in the process of preparing a SLR LCP update should be granted some

leeway with other CCC-required permitting or amendment applications in recognition of the considerable effort the SLR update will take in local staff and community resources.

### **3) *New versus Existing or Redevelopment Projects:***

The SLR Guidance should more clearly distinguish between policies that apply to existing versus new development, consistent with the Coastal Act. The SLR Guidance Document should directly address the legal takings issue in the event that implementing the SLR guidance leads to a denial of all uses on a private parcel that previously had entitlements. The SLR Guidance does not provide different guidance for existing entitled versus new development. Instead, the SLR Guidance includes a recommendation that local agencies obtain legal advice regarding specific takings situations.

At a minimum, the SLR Guidance should incorporate sections of the Coastal Act which distinguish between existing versus new development:

- Coastal Act Section 30235 states “revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.”
- Coastal Act Section 30253 states “new development shall neither create nor contribute significantly to erosion... or in any way require the construction of protective devices that would substantially alter landforms along bluffs and cliffs.”

The difference between Sections 30235 and 30253 are the words “existing” versus “new” development. The Coastal Act requires the CCC to protect existing structures; whereas it does not require the CCC to approve new development placed in a hazardous area.

### **4) *Expected Project Life / Design Life / Time-Delimited CDP:***

According to the SLR Guidance as we understand it, an applicant will be required to define a time-certain project lifespan that becomes the basis for the SLR scenario against which the project is evaluated and for which, in essence, a time-delimited CDP is issued. We ask the CCC to consider the establishment of a new type of CCC permit, a Time-Certain CDP that may be renewed based on future best SLR science. A Time-Certain CDP should include a requirement to remove the project at the end of its permit life, presuming the ocean is lapping at the foundation.

The SLR Guidance suggests that a minimum of 75 to 100 years should be considered as the design life for primary residential or commercial structures. The expected or



proposed project life would be used to determine the amount of sea-level rise the project site could be exposed to during the lifetime of that particular development. Instead, we suggest requiring the use of industry-practice appraisal or engineering protocols based on the expected lifespan of specified structural elements before major repair or replacement is required. A local jurisdiction must have a means to review and, if needed, correct an applicant's lifespan based on objective, readily available, quality information.

The SLR Guidance should address that some uses may have an indefinite lifespan, such as a habitat restoration, and what SLR scenario to use for an indefinite permanent project.

And, undoubtedly, time-limited permittees will eventually want to extend their permits, SLR permitting, and the SLR Guidance should include direction that incorporates continuing development of SLR science. A process should exist, similar to extending Subdivision Tract maps during economic downturns, to systematically extend time-delimited CDP's if future SLR is trending lower than expected, or by some similar State-certified criteria.

#### **5) *Regional Vulnerability Assessments and SLR Adaptation Planning:***

Principle No. 12 and No. 16 suggest that local governments conduct vulnerability assessments and adaptation planning at the regional level. To accomplish this, the local government would evaluate sea-level rise impacts throughout an entire littoral cell or watershed, determine how those impacts affect the LCP jurisdiction or project, and recommend adaptations that minimize impacts generated by sea-level rise. What if the neighboring city is doing the same task and arrives at different adaptations? There needs to be a way to avoid duplicate and inconsistent efforts by several jurisdictions.

Except where necessary for critical infrastructure, the SLR Guidance should minimize requirements for inter-jurisdictional planning, as such requirements are likely to increase costs and timelines for LCP updates. Perhaps counties or MPO's should be required to address critical regional coastal issues that span jurisdictions rather than have several cities developing separate analyses and adaptations for the same facility, such as an estuary levee system or county/city coastal highway.

Logically, inter-jurisdictional planning and cooperation is needed to minimize SLR impacts to infrastructure or natural resources that span multiple jurisdictional boundaries. However, although there may be benefits associated with addressing cumulative impacts on a regional basis, the SLR Guidance document is unclear when it describes a study that includes "regional impacts and any cumulative impacts within a larger planning context in a LCP or other larger-scale analysis."

#### **6) Clarify CEQA and Effects of the Environment on the Project**

The thought of completing a CEQA analysis for a SLR LCP update and its adaptations is daunting. CEQA would seem to require a worst case scenario, based on the existing

rule of "fair argument," and then CEQA requires all feasible mitigations. Will CEQA push all SLR updates to the maximum adaptation regardless of takings issues and economic impacts? How will local jurisdictions know with certainty what environmental analysis is acceptable to the CCC for its equivalent review process? We encourage the CCC to consider an exemption for SLR LCP updates, similar to CEQA statutory exemptions for preparation of general plan amendments required by the Delta Protection Commission (PRC 21080.22), Urban Water Management Plans (WC 10652), or categorical exemption 15307, procedures to protect the natural environment.

Finally, the *Ballona Wetlands Land Trust v. City of Los Angeles* case is not resolved as to whether CEQA pertains to the impact of the environment on a project. Clearly, SLR is overwhelmingly the impact of the ocean on projects, not much in the reverse. Depending on how the California Supreme Court rules on this case, jurisdictions may find themselves in a paradox of not being able to use CEQA to adopt their LCP update because CEQA does not apply, but having to provide a CEQA analysis to the CCC as part of the certification application. We suggest the CCC seek a legislative solution that clearly directs the environmental review process, or provides an exemption.

The City of Oxnard appreciates this opportunity to comment on the SLR Guidance document, as all local jurisdictions will continue to rely on the engagement of the CCC and its staff for guidance on SLR. The SLR Guidance is an important step in the process of creating new policies and regulations that effectively address sea-level rise. We look forward to future work with the CCC and its staff to address SLR within the Oxnard LCP.

Sincerely,



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Development Services Department

cc: Karen Burnham, Interim City Manager  
Grace Magistrale Hoffman, Deputy City Manager  
Martin Erickson, Deputy City Manager  
Matthew Winegar, Development Services Director